

# Code of Virginia

Title 55 PROPERTY AND CONVEYANCES  
CHAPTER 26

## VIRGINIA PROPERTY OWNERS ASSOCIATION ACT

With amendments through July 1, 2002

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CHAPTER 26**

**VIRGINIA  
PROPERTY OWNERS  
ASSOCIATION ACT**

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#### **§ 55-508. Applicability.**

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and control of a development shall be deemed to correspond with the term "declaration";

"Developer" shall be deemed to correspond with the term "declarant";

"Lot" shall be deemed to correspond with the term "lot"; and

"Subdivision" shall be deemed to correspond with the term "development."

This chapter shall be deemed to supersede the Subdivided Land Sales Act, and no development shall be established under the latter on or after July 1, 1998. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998.

The provisions of this chapter which exclude the applicability of this chapter to developments which impose on the association maintenance or operational responsibilities or on the owners or occupants of lots a mandatory payment of money less than \$150 per year per lot as a regular annual assessment shall not be applied retroactively to any development subject to a declaration recorded prior to July 1, 1991.

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. (1989, c. 679; 1991, c. 667; 1992, c. 677; 1998, cc. 32, 623.)

#### **§ 55-509. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area in an amount in excess of \$150 per year per lot as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration. (1989, c. 679; 1991, c. 667; 1996, c. 618; 1998, c. 623; 2001, c. 715; 2002, c. 459.)

#### **§ 55-509.1. Developer to pay real estate taxes attributable to the common area upon transfer to association.**

Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in § 58.1-3284.1 through the date of the transfer to the association. (1993, c. 956.)

#### **§ 55-509.2. Documents to be provided by declarant upon transfer of control.**

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting

period immediately succeeding the first election of the board of directors by the home owners, not to exceed sixty days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (vi) any contracts in which the association is a contracting party; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property.

If the association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi). (1996, c. 618.)

**§ 55-510. Access to association records; meetings of the board of directors.**

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the association, including, but not limited to, the association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation, and aggregate salary information of employees of the association, shall be available for examination and copying by a member in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the association. This right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to §55-513;
5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of §55-510.1;
8. Documentation, correspondence or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or
9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof.

E. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer who shall, at least fourteen days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. Notice shall be sent by United States mail to all members at the address of their respective lots and to such other addresses as any of them may have designated to such officer; or notice may be hand delivered by the officer, provided the officer certifies in writing that notice was delivered to the member. (1989, c. 679; 1991, c. 667; 1992, cc. 69, 71; 1993, cc. 365, 827; 1999, cc. 594, 654, 1029; 2000, cc. 905, 1008; 2001, c. 419.)

#### **§ 55-510.1. Meetings of the board of directors.**

A. All meetings of the board of directors shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes shall be recorded and shall be available as provided in subsection B of § 55-510.

B. Notice of the time, date and place of each meeting of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners and shall be sent by first-class mail or e-mail to any lot owner requesting such notice. A lot owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any e-mail address as appropriate.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors.

Any member may make an audio recording of any portion of a meeting required to be open. The board of directors conducting the meeting may adopt rules governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings.

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The board of directors may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors, following the

executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda. (1999, c. 1029; 2000, c. 905; 2001, c. 715.)

#### **§ 55-510.2. Distribution of information by members.**

The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association. (2001, c. 715.)

#### **§ 55-511. Contract disclosure statement; right of cancellation.**

A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act; (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with § 55-512; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet obtained by the seller in accordance with this section. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered or delivered with the consent of the purchaser by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt requested, to the owner or his agent. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser. The association may also send the resale certificate by electronic means with the consent of the seller and the purchaser.

D. Whenever any contract is canceled based on a failure to comply with subsection A or C or pursuant to subsection B, any deposit or escrowed funds shall be returned within thirty days of the cancellation, unless the parties to the contract agreed upon a shorter period.

E. Any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived. (1989, c. 679; 1991, c. 667; 1995, c. 573; 1997, c. 887; 1998, c. 32; 1999, c. 809; 2001, c. 556; 2002, cc. 399, 509.)

**§ 55-512. Contents of association disclosure packet; other requirements.**

A. Subject to the provisions of subsections C and F, the association shall make available to an owner or his authorized agent within fourteen days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;
2. A statement of any expenditure of funds approved by the association or the board of directors which shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;
3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association and associated with the purchase, disposition and maintenance of the lot and to the right of use of common areas, and the status of the account;
4. A statement whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;
5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board of directors for a specified project;
6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available;
7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased;
8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in subdivision 12 of this subsection;
10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;
11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;



12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

13. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

14. A copy of the fully completed one-page cover sheet developed by the Real Estate Board pursuant to §54.1-2105.1; and

15. Certification, if applicable, that the association has filed with the Real Estate Board the annual report required by §55-516.1; which certification shall indicate the filing number assigned by the Real Estate Board and the expiration date of such filing.

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

The disclosure packet, once received by the seller from the association, shall be delivered by the seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of §13.1-501.

B. The purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished remains materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed ten cents per page of copying costs or a total of fifty dollars for all costs incurred in updating the association disclosure packet. The association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection.

C. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall not exceed ten cents per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet, except that the association, upon mutual agreement with the seller, may collect for actual costs incurred, in addition to any fee charged pursuant to this subsection (i) a rush fee, not to exceed twenty-five dollars, for furnishing the resale certificate within three business days from the actual receipt of the request, (ii) the actual cost of any mailing or delivery requested by the seller pursuant to this subsection, and (iii) any actual cost incurred at the request and with the consent of the purchaser. Neither the association nor its management agent, if any, shall require cash or certified funds unless the lot owner is delinquent in any payments due to the association in excess of thirty days or if a check of the lot owner made payable to the association was returned for insufficient funds within the last six months.

D. When a disclosure packet has been issued as required by this section, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of any of the instruments referred to in subdivision 12 of subsection A as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

E. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale. The settlement agent, as defined in §6.1-2.20, when transmitting funds to the association or otherwise upon request, shall provide the association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any

funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

F. The contract disclosures required by §55-511 and the disclosure packet required by this section need not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or
5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

G. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the packet to the purchaser. (1989, c. 679; 1991, c. 667; 1993, c. 96; 1995, c. 573; 1997, c. 222; 1998, cc. 32, 463; 2000, c. 891; 2001, c. 556; 2002, cc. 399, 459, 509.)

#### **§ 55-513. Adoption and enforcement of rules.**

A. The board of directors of the association shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the court may award to the association court costs and reasonable attorneys' fees.

B. The board of directors of the association shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than sixty days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

Before any such charges or suspension may be imposed, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least fourteen days prior to the hearing.

The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed fifty dollars for a single offense or ten dollars per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516.

However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding ninety days. After the date a lawsuit is filed challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action.

The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association within seven days of the hearing. (1989, c. 679; 1991, c. 667; 1993, c. 956; 1994, c. 368; 1997, cc. 173, 417; 2000, cc. 846, 905; 2002, c. 509.)

**§ 55-513.1. Flag display; necessary supporting structures; affirmative defense.**

A. Unless specifically prohibited by the association's rules and regulations or architectural guidelines provided in the disclosure packet required pursuant to §55-512, the association shall not prohibit any lot owner from displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed forces of the United States, or (iv) any military valor or service award of the United States.

B. In any action brought by the association under § 55-513, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to § 55-512. (2000, c. 891.)

**§ 55-514. Authority to levy special assessments.**

A. In addition to all other assessments which are authorized in the declaration, the board of directors of an association shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within sixty days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55-516 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road within the development which is a common area shall not be denied the member. (1989, c. 679; 1991, c. 667; 1992, c. 450; 1998, cc. 32, 751.)

**§ 55-514.1. Reserves for capital components.**

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect. (2002, c. 459.)

#### **§ 55-515. Compliance with declaration.**

A. Every lot owner, and all those entitled to occupy a lot shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its executive organ or any managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs expended in the matter.

B. A declaration may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the development is located, or as mutually agreed to by the parties. (1989, c. 679; 1993, c. 956.)

#### **§ 55-515.1. Amendment to declaration and bylaws; consent of mortgagee.**

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within sixty days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within sixty days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. A declaration may be amended by agreement of owners of two-thirds of the lots subject to that declaration. This subsection may be applied to an association subject to a declaration recorded prior to July 1, 1999, upon the amendment of that declaration in accordance with its requirements.

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications thereof. (1997, c. 887; 1998, c. 32; 1999, c. 805.)

#### **§ 55-515.2. Validity of declaration; corrective amendments.**

A. All provisions of a declaration shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of a declaration shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a declaration restraining the alienation of lots other than such lots as may be restricted to residential use only.

E. The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in a declaration.

F. The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the declaration with respect to an objectively verifiable fact (including without limitation recalculating the liability for assessments or the number of votes in the association appertaining to a lot), within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection. (1998, c. 32; 2001, c. 271.)

#### **§ 55-516. Lien for assessments.**

A. Once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under §55-58.2 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file before the expiration of twelve months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county

or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association, or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;
2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;
4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;
5. The date of issuance of the memorandum;
6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and
7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§55-508 et seq.) of Title 55.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinafter provided to record and index the same as provided in subsection D, in the names of the persons identified therein as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least ten days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No suit to enforce any lien perfected under subsection B shall be brought after twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein the petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

F. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and reasonable attorney's fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B hereof, the lien shall be released in accordance with the provisions of §55-66.3. Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A (1) of §55-66.3. For the purposes of §55-66.3, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A hereof creates a lien, maintainable pursuant to §55-515.

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the unit at public sale, subject to prior liens, conducted in compliance with the following:

1. In addition to the advertisement required by subdivision 2, the property owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the property owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least thirty days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least thirty days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than fourteen days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than fourteen days prior to such sale, shall be a sufficient compliance with the requirement of notice.

2. The advertisement of sale by the property owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The property owners' association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than thirty days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the property owners' association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the property owners' association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the property owners' association shall give such other further and different advertisement as the association finds appropriate.

3. In the event of postponement of sale, which postponement shall be at the discretion of the property owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

4. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

5. In the event of a sale, the property owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the property owners' association from any person for entry by announcement at the sale. Any person other than a member of the property owners' association may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the property owners' association, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids.

b. The property owners' association may require of any bidder at any sale a cash deposit of as much as ten percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the property owners' association in connection with that sale.

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of

sale; second, to the satisfaction of all taxes, levies and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the owner's equity, without actual notice thereof prior to distribution. (1989, c. 679; 1991, c. 667; 1997, cc. 760, 766; 2000, c. 905.)